IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4190 OF 2006

Mrs.Mehmooda Hafiz Shaikh Mumtaz
and Anr. .. Applicants

Versus

State of Maharashtra .. Respondent

Mr.Milan Desai i/b. M.R.Patil for applicants
Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 28th November 2006.

P.C.

. Heard Mr.Desai for applicants and Mr.Mirza, A.P.P. for State. First applicant is

mother in law and second applicant is father in law of the deceased, who have been arrested on 14th July and 6th October 2006, in connection with C.R.No.291 of 2006 registered at Mumbra police station. Offences punishable are under sections 306, 498A read with 34 I.P.C.

2. Deceased was married to the son of applicants. Marriage was solemanised on 11th September 2005. Deceased expired on 11th July 2006. She committed sucide, according to prosecution by hanging herself.

3. Statements of father of deceased and neighbours demonstrate that the deceased was harassed and ill-treated time and again by the applicants by making demands for dowry. Father of deceased has stated that despite arranging and thereafter spending more than Rs.50,000/- at the marriage so also handing over the articles, the demands persisted and the deceased was called

upon to bring a further sum of Rs.1 lakh. The deceased family hails from a small place in State of Bihar. Father of deceased, apart from deceased, has in all nine children. He comes from an extremely poor family. In such circumstances and when the deceased was not allowed to meet and contact her parents by the in-laws, present applicants, the prosecution alleges that a clear case is made out under the aforesaid provisions.

4. Mr.Desai on the other hand submits that even if this is not a stage to scrutinise the evidentiary value of the material collected but the investigations being complete and charge sheet being filed so also the applicants being mother in law and father in law, deserve leniency and mercy from this Court. He has also contended that the uncle as also the nephew of complainant residing in Mumbai were aware of the marriage but they have not made any grievances during the

period when the marriage was subsisting. Similarly, the allegation that the deceased was locked in the house and not allowed to meet outsiders or contact them in any manner is not corroborated. In such circumstances, so also when the deceased herself was unable to meet her parents because of the travelling and other expenses, this is not a case where the applicants should be detained further.

5. Mr.Mirza, A.P.P. on the other hand highlighted the fact that such incidents are on increase and there is active participation even by the women accused. It is a case where apart from the husband, applicants are responsible for the plight of deceased. They have continuously ill-treated and harassed so also tortured her by making demands for dowry and this is a rare case where the neighbours are supporting deceased family. In such circumstances, this application should be rejected.

6. While it is true that the incidents are on increase and they have to be put down with strong and firm hand, yet, the accused who are guilty prima facie of commission of serious offences are not disentitled from applying for bail. The provisions in law, apart from being discretionary, carve out a further discretion in the case of a woman accused. Similarly, merely because there is a strong prima facie case does not straight away mean that bail has to be denied. All factors necessary and relevant which go into deciding a bail application have to be taken into consideration. The Supreme Court in the decision reported in (2005) 8 S.C.C. 21 referred to the relevant aspects, which go into the exercise of discretion in favour of an accused and consider his request for enlarging him/her on bail. The menace of dowrry is increasing and has now percolated to even lower strata. It has pervaded all families

irrespective of their caste and religion. There is much substance in the contentions of Mr.Mirza that the applicants, therefore, are prima facie guilty of serious offences.

7. Yet, it is not disputed that the charge sheet is filed after investigations are complete. Mr.Desai has taken instructions and has contended that mercy be shown as now there is nobody to look after other children of applicants. Their only son is also in custody. The children are being looked after temporarily but they would require care and attention of the parents. However, there are no materials produced which would demonstrate that the applicants, if released on bail would tamper with the prosecution witnesses or threaten them in any manner. Apart from this, Mr.Desai submits that the applicants undertake not to enter limits of Mumbra police station as also Nagpada Police station where relations of deceased reside. They

would also abide by all stringent conditions including reporting at the police station. In such circumstances, a sympathetic consideration of their application is necessary.

8. Taking a over all view of the matter and in the light of the undertakings given by Mr.Desai, while not going into the rival contentions on merits and keeping them open, in my view, the following order would meet the ends of justice. Hence, following order:-

i) The applicants (1) Mrs.Mehmooda Hafiz Shaikh Mumtaz and (2) Hafiz Mumtaz Abuilias Shaikh arrested in connection with C.R.No.291 of 2006 registered with Mumbra Police Station shall be enlarged on bail in the sum of Rs.25,000/- each with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicants shall not enter limits of Mumbra Police Station and Nagpada Police station. Applicants shall not reside within the limits of Mumbai police station and shall give their new residential address to I.O. The applicants will remain present before the nearest police station to their residence once a week on every Saturday between 5.00 p.m. and 7.00 p.m. till conclusion of the trial.

iii) The order of bail will be given effect only after the applicants furnish to the investigating officer the details about their place of residence and address where they propose to stay after they are enlarged on bail. The applicants will not change their residential address thereafter till the

conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicants shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicas shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicants to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

. In the light of the fact that the trial is into an offence alleging abetment/instigation to sucide on account of demand of dowry, it is desirable and in the interest of justice that the learned Judge endeavours and disposes of the case as expeditiously as possible and in any event by 31st December 2007.

(S.C.DHARMADHIKARI, J)